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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,259	08/11/2001	Lloyd E. Fladgard	31957.8010US1	5732

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PERKINS COIE LLP  
PATENT-SEA  
P.O. BOX 1247  
SEATTLE, WA 98111-1247

EXAMINER
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BLAKE, CAROLYN T

ART UNIT	PAPER NUMBER
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3724

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

<b>Office Action Summary</b>	<b>Application No.</b> 09/928,259	<b>Applicant(s)</b> FLADGARD ET AL.	
	<b>Examiner</b> Carolyn T. Blake	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 46-61 is/are pending in the application.
- 4a) Of the above claim(s) 46-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 18, 2006 has been entered.

### ***Election/Restrictions***

2. Newly submitted claims 46-55 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 46-55 are directed to a combination, whereas claims 56-61 (and the originally presented claims) are directed to a subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed such as "a hole in the body extending between the first and second shear faces, the hole being configured to interface with the casing such that the blade can be attached to the casing with the first shear face caving inward and only the first section of the first shear edge positioned at a cutting zone for shearing a work piece, the hole being further positioned such that the blade can be attached to the casing with the

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second shear face facing inward and only the second section of the first shear edge positioned at the cutting zone" as set forth in claim 56. The subcombination has separate utility such as a hand-held cutting tool with a first blade and an anvil. This combination does not require the second claim of claim 46.

Since Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 46-55 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 56-59 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by La Bounty (5,142,779).

La Bounty discloses a cutting blade (116) as claimed, including: a body having spaced-apart first and second shear faces, the first and second shear faces defining a

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thickness of the body; a first guide surface (between 122 and 124) extending between the first and second shear faces; a first shear edge (122) at the junction of the first guide surface and the first shear face, the first shear edge having a first section (section not covered by jaw 100) and a second section (section covered by jaw 100) different than the first section; a second shear edge (124) at the junction of the first guide surface and the second shear face, the first and second shear edges being generally parallel to and spaced apart from one another by the thickness of the body; and a hole (118) in the body extending between the first and second shear faces, the hole being configured to interface with the casing such that the blade can be attached to the casing with the first shear face facing inward and only the first section of the first shear edge positioned at a cutting zone

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over La Bounty as applied to claim 56 above, and further in view of the following.

La Bounty discloses a cutting blade substantially as claimed, but fails to disclose six mounting holes. However, it is well known in the art to provide additional holes and fasteners on a device in order to more firmly secure the device to a main body. Therefore, it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to provide an additional mounting hole on the LaBounty blade in order to more firmly secure the blade to the shearing device. Furthermore, varying the position of the holes along the blade would have been obvious to one of ordinary skill in the art at the time the invention was made in order to firmly secure the blade and prevent vibrations.

### ***Response to Arguments***

7. Applicant's arguments filed December 18, 2006 have been fully considered but they are not persuasive.

Because claims 46-55 have been withdrawn based on election by original presentation, Applicant's arguments regarding these claims are moot. See above.

Applicant's arguments regarding claims 55-61 are not understood. Applicant's designation of first and second sections on a shear edge is arbitrary and not defined by a specific structure. As such, the La Bounty reference reads on these claims, as detailed above.

While differences may exist between Applicant's device and the prior art of record, these differences have not been claimed.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Thursday, 7:00 AM to 5:30 PM EST.

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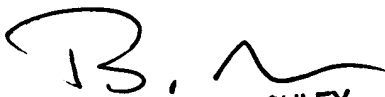
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CB

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February 12, 2007

  
BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER